

**STATE OF DELAWARE**  
**PUBLIC EMPLOYMENT RELATIONS BOARD**

**IN THE MATTER OF:**

<b>DELAWARE DEPARTMENT OF CORRECTION,</b>	:	
<b>BUREAU OF ADULT CORRECTIONS,</b>	:	
	:	<b>REPRESENTATION PETITION</b>
<b>AND</b>	:	
	:	<b><u>02-03-350</u></b>
<b>DELAWARE CORRECTIONAL OFFICERS ASSOCIATION,</b>	:	
	:	<b>(DECERTIFICATION)</b>
<b>AND</b>	:	
	:	
<b>CORRECTIONAL OFFICERS ASSOCIATION OF DELAWARE.</b>	:	

**DECISION ON DCOA’S OBJECTIONS TO VALIDATION OF PETITION**

The Department of Correction, Bureau of Adult Corrections (“DOC”) is an agency of the State of Delaware and a public employer within the meaning of section 1302 (n) of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13 (1994).

Delaware Correctional Officers Association (“DCOA”) is an employee organization within the meaning of 19 Del.C. §1302(i). DCOA was certified as the exclusive representative of the bargaining unit of Correctional Officers as defined in DOL Case 1 on February 17, 1994. The most recent collective bargaining agreement between DOC and DCOA had a term of October 11, 1996 through October 10, 1999.

On or about March 28, 2002, a Decertification Petition was filed with the Public Employment Relations Board (“PERB”), pursuant to 19 Del.C. §1311(b), asserting DCOA is no longer the choice of the majority of the public employees in the bargaining unit. The petition was accompanied by cards evidencing bargaining unit members support for the petition, and

specifically seeking to replace DCOA with another employee organization, Correctional Officers Association of Delaware (“COAD”).<sup>1</sup>

DOC provided a list of 1553 bargaining unit employees, against which the cards were compared. By letter dated April 8, 2002, PERB advised DCOA that the petition had been properly filed and was supported by at least thirty percent (30%) of the bargaining unit employees, as required by 19 Del.C. §1311(b). Notices were also provided to DOC for posting in the workplace to advise bargaining unit employees that the petition had been filed and that PERB would be conducting a secret ballot election in order to determine by whom the bargaining unit desired to be represented for purposes of collective bargaining.

On April 15, 2002, DCOA filed an “Objection to the Verification of the Decertification Petition.” Specifically, DCOA asserts:

- (5) Title 19 Del.C. 1312(b) requires that a petition must contain the uncoerced signatures of at least 30% of the employees within the Bargaining Unit and allege that the employee organization presently certified is no longer the choice of the majority of the employees in the bargaining unit. The Petition which was filed contained coerced signatures which can be proved by the Delaware Correctional Officers Association. The Delaware Correctional Officers Association allege that representatives of the Correctional Officers of Delaware [*sic*] coerced numerous employees of the Bargaining Unit and used other threatening, offensive and illegal tactics to get certain members of the Bargaining Unit to sign decertification documents. Delaware Correctional Officers Association also believes that the Petition should not have been accepted since the Correctional Officers Association of Delaware used copies of the Decertification cards which had already been filed [*sic*] out and forced numerous Bargaining Unit members to sign such documents through their threatening and illegal behavior. Thus, the Petition should not have been accepted or verified by the Public Employment Relations Board since the Petition did not contain the un-coerced [*sic*] signatures of at least 30% of the employees and due to the fact that the decertification cards were in fact copies which were already filled in by representatives of Correctional Officers Association of Delaware who then forced Bargaining Unit members to sign them. The Delaware Correctional Officers Association can present numerous witnesses who will testify that the Correctional Officers Association of Delaware acted illegally when they threatened, coerced and improperly forced numerous Bargaining Unit members to sign such decertification documents.

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<sup>1</sup> Correctional Officers Association of Delaware (“COAD”) is an employee organization within the meaning of 19 Del.C. §1302(i).

- (6) Delaware Correctional Officers Association also submits that the Petition contained signatures of individuals who were not employees within the bargaining unit as required by law.

DCOA requested the PERB schedule a hearing in order to allow DCOA to submit evidence and that PERB rule the petition is invalid.

### **OPINION**

Decertification proceedings are statutorily provided for in subsection (b) of §1311 of the Act, and subsection (c) addresses the subsequent election protocols:

- (b) Where an employee organization has been certified as the exclusive representative, a group of employees within the bargaining unit may file a petition with the Board for decertification of the exclusive bargaining representative. The petition must contain the uncoerced signatures of at least 30 percent of the employees within the bargaining unit and allege that the employee organization presently certified is no longer the choice of the majority of employees in the bargaining unit. If a lawful collective bargaining unit of no more than 3 years' duration is in effect, no petition shall be entertained unless filed not more than 180 days nor less than 120 days prior to the expiration of such agreement. A decertification petition may also be filed if more than 1 year has elapsed from the date of certification of an exclusive bargaining representative and no collective bargaining agreement has been executed, and the procedures for mediation and fact-finding have been invoked and completed as provided in this chapter.
- (c) If the Board determines that a petition is properly supported, timely filed and covers the designated appropriate bargaining unit, the Board shall cause an election of all eligible employees to be held within a reasonable period after the unit determination has been made, in accordance with procedures adopted by the Board, to determine if and by whom the employees wish to be represented. The election ballot shall contain, as choices to be made by the voter, the name of the petitioning employee organization and the certified employee organization, the name or names of any other employee organization showing written proof of at least 10 percent representation of the public employees within the designated appropriate bargaining unit, in accordance with rules and regulations adopted by the Board, and a choice that the public employee does not desire to be represented by any of the named employee organizations.

In order to validate a decertification petition, the Executive Director or his designee is required to "review the petition for the purpose of determining whether the petition satisfies the

requirements of Regulation ... 3.3.”<sup>2</sup> ..PERB Reg. 3.4. There is no question in this case but that the petition is timely filed. On its face, the petition alleges that the employee organization presently certified, DCOA, is no longer the choice of the majority of employees in the bargaining unit. The objection raised by DCOA relates only to the adequacy of the showing of interest provided in support of the petition.

The showing of interest provided to support a representation petition is protected by PERB Regulation 3.7, Showing of Interest.

The signatures constituting the showing of interest under ... 19 Del.C. §1310 or §1311 shall not be disclosed to any of the parties. The Executive Director shall determine the adequacy of the showing of interest as part of his investigation of the petition.

The National Labor Relations Board, after which the Delaware PERB is modeled, has a long-standing practice of treating any question relating to showing of interest as an administrative matter which is not litigable in a representation hearing. Union Mfg. Co., 123 NLRB 1633, 44 LRRM 1188 (1959). The determination as to whether a petition is adequately supported is purely an administrative expedient, “... adopted to enable the Board to determine for itself whether or not further proceedings are warranted, and to avoid the needless dissipation of the Government’s time, effort, and funds.” O.D. Jennings & Co., 68 NLRB 516, 18 LRRM 1133 (1946). Findings by the NLRB Regional staff that a petition is adequately supported is subject to neither direct nor collateral attack, nor are the cards revealed to any party.

It is the representation election which will determine the substantive issue of whether or not this bargaining unit will be represented for purposes of collective bargaining and, if so, by whom. The statute grants to employees the right to be represented, to negotiate collectively, and

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<sup>2</sup> PERB Regulation 3.3 Contents of Petition for Decertification

A petition for decertification may be filed by a public employee or group of public employees. An employee organization or a public employer may not file a petition for decertification. A petition for decertification shall contain the following:

- (1) A statement that the employee organization presently certified as the exclusive representative is no longer the choice of the majority of the public employees in the appropriate bargaining unit;
- (2) A showing of interest required by ... 19 Del.C. §1311(b);
- (3) Conform with the time periods required by ... 19 Del.C. §1311(b).

to grieve through representatives of their choosing. 19 Del.C. §1301; 1303. The showing of interest serves only to provide a reasonable basis for this agency to assess whether there is a reasonable basis, administratively, for conducting an election.

In order to provide insight into the process that was used in reviewing the cards, PERB staff did not count any cards signed by individuals who were not included on DOC's list of bargaining unit employees, nor were cards counted that were not dated, signed or which did not appear to be originals.

DCOA's can address its concerns that "individuals who were not employees within the Bargaining Unit" at the point that the list of eligible voters is provided in preparation for the election. At the point that DCOA receives this list, it will have the opportunity to challenge the validity and/or completeness of the eligible voter list, and to provide written reasons for any challenges. This right is also extended to COAD and any other employee organization which may be included on the ballot.

In keeping with prior practice and the directives of the full Public Employment Relations Board, this decertification petition will be processed to election as quickly as it reasonably possible, in order to provide the employees with the right to express their desire in a neutral forum, free from interference.

Finally, PERB Reg. 3.7. provides

Review of the Executive Director's Petition Validation Decision: Any objections to the validation process shall be filed with the Executive Director, in writing, within five (5) days of the date upon which the Notice of Petition Validation is received. Any objections filed will be resolved by the Executive Director within fourteen (14) days of their receipt. Any such decision issued by the Executive Director in response to objections to the validation process shall be interlocutory and shall be subject to appeal to the full Board once a final determination is made on the petition itself.

### **DECISION**

For the reasons set forth above, the objections of DCOA to the validation of the decertification petition are dismissed. An election will be conducted as soon as is reasonably

practicable in order to allow the bargaining unit employees to determine whether they desire to continue to be represented for purposes of collective bargaining and, if so, by whom.

**IT IS SO ORDERED.**

/s/Deborah L. Murray-Sheppard  
DEBORAH L. MURRAY-SHEPPARD  
HEARING OFFICER  
DEL. PUBLIC EMPLOYMENT RELATIONS BD.

DATED: 19 April 2002